



CHECKLIST AND INSTRUCTIONS FOR
CATEGORICALLY EXCLUDED
PROJECTS

EXHIBIT E-4

CHECKLIST FOR CATEGORICALLY EXCLUDED PROJECTS - 58.35(a)

- a. Respond to **ALL** criteria.
- b. If you are requesting **CONTINUED RELEVANCE** complete a reassessment of **ALL** categories of the original environmental review including any new criteria now required or available.

GRANTEE:

SUB GRANTEE:

NAME OF PROJECT:

CONTRACT #:

PREPARED BY:

IMPACT CATEGORIES →	NO IMPACT	POTENTIALLY	POTENTIALLY ADVERSE	REQUIRES MORE STUDY	NEEDS MITIGATION	NEEDS MODIFICATION	
Related Federal Laws & Authorities 24 CFR Part 58.5 ↓							Attach a separate page(s) on which you respond to each of the criteria.. Attach all/any supporting documentation and material.
1 HISTORY: Properties, Archaeological, Cultural The National Historic Preservation Act of 1966 Protection and Enhancement of Cultural Environment							Review Attachment A
2 FLOODPLAINS MANAGEMENT & WETLAND PROTECTION – (24 CFR PART 55)							Review Attachment B
a. Executive Order 11988, Floodplain Management - Eight Step Process							Review Attachments C, C1, C2, C3, C4
b. Executive Order, 11990, Protection of Wetland -Eight Step Process							Review Attachments C, C1, C2, C3, C4
3 COASTAL BARRIERS	** NOT APPLICABLE IN REGION VIII - UTAH**						
4 SOLE SOURCE AQUIFERS -Safe Drinking Water act of 1974 (40 CFR Part 149)							Review Attachment D
5 ENDANGERED SPECIES - The Endangered Species Act of 1973.							Review Attachment E
6 WILD AND SCENIC RIVERS - The Wild and Scenic Rivers Act of 1968							Review Attachment F
7 AIR QUALITY - The Clean Air Act & 40 CFR Parts 6,51,93							Review Attachment G
8 FARMLANDS PROTECTIONS - Farmland Protection Policy Act of 1981 & 7 CFR PART 658.							Review checklist instructions
9 TOXIC CHEMICALS/RADIOACTIVE MATERIALS - CERCLIS HUD Notice 79-33							Review Attachment H
10 ENVIRONMENTAL JUSTICE Executive Order 12898							Review checklist instructions
11 HUD ENVIRONMENTAL STANDARDS: 24 CFR PART 51 - (SUBPARTS B, C, D)							
NOISE (Subpart B)							Review Attachment I
HAZARDOUS SUBSTANCES (Subpart C)							Review Attachment J
AIRPORT CLEAR ZONES (Subpart D)							Don't build on an airport runway.

12 LOCAL LAWS AND REGULATIONS (EG: County, City, town permits)	(A statement should be made indicating that the local laws will be observed and which building permits, etc, if any, will be required.)
13 Lead Based Paint 24 CFR Part 35 – Refer to Section I of handbook	This project involves pre-1978 buildings used for children <u>OR</u> sleeping ____ This project does not involve pre-1978 buildings used for children <u>OR</u> sleeping ____
14 Culinary Water Projects & Wastewater Treatment Plant Projects	DEQ requires grantees to submit project plans prior to construction. Approval letter from DEQ must be attached to this checklist in order to receive an environmental clearance from the HUD environmental review officer (Cheryl Elliott).
SUMMARY OF FINDINGS AND CONCLUSIONS:	
PROJECT MODIFICATIONS AND ALTERNATIVES CONSIDERED:	
MITIGATION MEASURES NEEDED OR ALTERNATIVES PROPOSED:	

ATTACH ALL BACK-UP DOCUMENTS TO CHECKLIST

FINDING

The ECO has compared the project with the above cited authorities and:

1. Project is in compliance with all applicable laws & regulations. ☐ YES ☐ NO
2. An Environmental Impact Statement (EIS) is required? ☐ YES ☐ NO
3. CHECK THE APPROPRIATE FINDING AS DETERMINED AS A RESULT OF THE REVIEW.
 - a. ☐ None of the laws or authorities cited above was found to require mitigation. The project has therefore been determined to be EXEMPT under 24 CFR Part 58.34(a)(12). **Send completed checklist with all attachments to DCD.**
 - b. ☐ Some of the listed criteria were “triggered” and mitigation of the impact was required. The project has therefore been determined to be CATEGORICALLY EXCLUDED under 24 CFR 58.35 (____) A Notice of Intent to Request a Release of Funds (NOI/RROF Exhibit E-6) and a Request for Release of Funds and Certification (RROF/CERT Exhibit E-8) must be prepared. **(Send completed checklist and all attachments, NOI/RROF publication, and RROF/CERT to DCD. Also, complete Exhibit E-9 and send a copy to DCD.)**

Signed by _____
Preparer _____

Title _____
Date _____

Signed by _____
ECO _____

Title _____
Date _____

SAMPLE EXHIBIT E-4

CHECKLIST FOR CATEGORICALLY EXCLUDED PROJECTS - 58.35(a)

Instructions:

- a. Address **ALL** criteria.
- b. If requesting **CONTINUED RELEVANCE** complete a reassessment of **ALL** categories of the original environmental review including any new criteria now required or available.

GRANTEE: SOMEWHERE CITY

SUB GRANTEE:

NAME OF PROJECT: REPLACEMENT OF
CULINARY WATER LINES, CITYWIDE

CONTRACT # : **04-2639**

PREPARED BY: CITY MANAGER, SAM SPADE

⇒ IMPACT CATEGORIES	NO IMPACT	POTENTIALLY BENEFICIAL	POTENTIALLY ADVERSE	REQUIRES MORE STUDY	NEEDS MITIGATION	REQUIRES MODIFICATION	
Related Federal Laws & Authorities 24 CFR Part 58.5							Attach a separate page(s) on which you respond to each of the criteria.. Attach all/any supporting documentation and material
1- HISTORY: Properties, Archaeological, Cultural The National Historic Preservation Act of 1966 Protection and Enhancement of Cultural Environment	X						See highlighted Section of P.A. - Property disturbed at time of installation of culinary water lines
2- FLOODPLAINS MANAGEMENT & WETLAND PROTECTION - Flood Disaster Protection Act of 1973 as amended.-							
a. Executive Order 11988, Floodplain Management - Eight Step Process	X						Site not located in floodplain. See attached floodplain map.
b. Executive Order, 11990, Protection of Wetland -Eight Step Process	X						Site review by S.Spade 05/04 No wetland habitat visible. Contacted Army Corp. See letter from Brooks carter, 06/25/04
3- COASTAL BARRIERS	** NOT APPLICABLE IN REGION VIII**						
4 SOLE SOURCE AQUIFERS - Safe Drinking Water Act of 1974		X					There will be no impact to any sole source aquifers, see the attached letter from EPA, Dated 4/29/02. Drinking water will be improved because by increased purity and size of line. Culinary water will no longer be subjected to possible contamination.
5 ENDANGERED SPECIES - The Endangered Species Act of 1973.	X						Site review by S. Spade 05/04. Although Bald Eagles are listed as evident in this area on the most current Endangered Species List no eagle habitat was observed within the area to be piped. It is also very unlikely that the installation of water lines in existing trench would affect any if they were in

							evidence. However contact was made with F/W. See response letter attached
6- WILD AND SCENIC RIVERS - The Wild and Scenic Rivers Act of 1968	X						No designated or inventoried rivers are identified in the proposed area of work.
7- AIR QUALITY - The Clean Air Act as amended	X						No permit is required for this type of activity. See attached letter from Air Quality, dated 2/11/04
8- FARMLANDS PROTECTIONS - Farmland Protection Policy Act of 1981.	X						No farmland will be impacted. The property in which the pipe will be laid is zoned as a city-right of way for the purpose of infrastructure in residential/commercial areas
9- TOXIC CHEMICALS/RADIOACTIVE MATS. HUD Notice 79-33	X						The enclosed CERCLIS list, 01/04, was reviewed. There are no sites identified within 3000 ft of the site.
10 ENVIRONMENTAL JUSTICE - Executive Order 12898	X						One of the results of this project will be to enhance the present living conditions of residents by eliminating the possibility of disease from bacteria and contamination. This benefit will be provided to the entire community. This service will not be discriminatory to any LMI or minority residents.
11. HUD ENVIRONMENTAL STANDARDS: 24 CFR PART 51 - Subparts B, C, D							
NOISE (Subpart B)	X						This is not a noise sensitive project and only a minimal amount of noise will be created at the time of construction.
HAZARDOUS SUBSTANCES (Subpart C)	X						There will be no impact from any above ground hazards. The entire project will be installed beneath ground.
AIRPORT CLEAR ZONES (Subpart D)	X						Although this type of project is permissible in an airport clear zone, it will not be located in one, see map of airport.
12- LOCAL LAWS AND REGULATIONS	All local laws will be observed as this project is installed and constructed. All local permits will be obtained prior to installation.						
13 Lead Based Paint 24 CFR Part 35 – Refer to Section I of handbook	This project involves pre-1978 buildings used for children <u>OR</u> sleeping This project does <u>not</u> involve pre-1978 buildings used for children <u>OR</u> sleeping X						

14 Culinary Water Projects & Wastewater Treatment Plant Projects	See DEQ approval letter attached.
SUMMARY BASED ON THE ENVIRONMENTAL CHECKLIST	
SUMMARY OF FINDINGS AND CONCLUSIONS: Project will be constructed in existing waterline trench.	
There will be no adverse effect on any of the above environmental topics.	
PROJECT MODIFICATIONS AND ALTERNATIVES CONSIDERED: None needed.	
MITIGATION MEASURES NEEDED OR ALTERNATIVES PROPOSED: None considered or needed for this project.	

ATTACH ALL COMPLIANCE DOCUMENTS

FINDING

The ECO has compared the project with the above cited authorities and:

1. Project is in compliance with all applicable laws & regulations. ☒ YES ☐ NO
2. Is an Environmental Impact Statement (EIS) required? ☐ YES ☒ NO
3. CHECK THE APPROPRIATE FINDING AS DETERMINED AS A RESULT OF THE REVIEW.
 - a. ☒ None of the laws or authorities cited above was found to require mitigation. The project has therefore been determined to be EXEMPT under 24 CFR part 58.34(a)(12). **(Send completed checklist with all attachments to DCD.)**
 - b. ☐ Some of the listed criteria were “triggered” and mitigation of the impact was required. The project has therefore been determined to be CATEGORICALLY EXCLUDED under 24 CFR 58.35 (____). A Notice of Intent to Request a Release of Funds (NOI/RROF Exhibit E-6) and a Request for Release of Funds and Certification (RROF/CERT Exhibit E-8) will be prepared. **(Send completed checklist and all attachments, NOI/RROF publication, and RROF/CERT to DCD.)**

Signed by Preparer	Title
Date	
Signed by ECO	Title
Date	

EXHIBIT E-4

CATEGORICALLY EXCLUDED CHECKLIST QUESTIONS 58.35(a)

To complete the checklist ask yourself the following questions under each criteria or follow the specific instruction provided

1. **HISTORY: Properties, Archaeological, Cultural** – See Attachment A

Laws/Regulations: National Historic Preservation Act of 1966, Executive Order 11593, and Preservation of Historic and Archaeological Data Act of 1974-Potentially applicable to **ALL** proposed actions. These acts deal with the protection and/or preservation of sites/structures/districts included or eligible for the National Register of Historic Places and Properties and the preservation of scientific and historical, prehistoric and archaeological data.

Summary - take into account the effect of the undertaking on any district, site, building, structures or objects that might have significant associations with historic, architectural, archaeological or cultural events, persons, groups, and social or artistic movements.

WHAT DO I DO?:

1. Review the **Programmatic Agreement (PA), Attachment A. Start with APPENDIX 1.**

This section lists all the activities that are exempt from the Historic Preservation Act.

2. Perform a site inspection of the property or area to identify and evaluate the project in relation to information contained in the Programmatic Agreement

3. Ask the following questions:

- a. Does the site contain a structure over 50 years of age or is the site in proximity to a structure (1/4 mile) that is over 50 years of age?
- b. If a structure over 50 years has been identified as part of the project, has a Reconnaissance Level Survey already been performed and approved by the SHPO?
- c. **Is the site identified on the National Register of Historic Properties or does it appear to meet the eligibility criteria for the National Register?** Does the locality have an inventory of historic places?
- d. **Does there appear to be possible archaeological significance at the site?**
- e. Are there other properties, including structures fifty (50) or more years old, within the boundaries or in the vicinity of the project that appear to be historic and would thus ordinarily require consultation with the SHPO (State Historic Preservation Officer)?
- f. What are the materials that will be replaced if the project involves rehabilitation?
- g. Is this project the replacement or rehabilitation of a public improvement?
- h. Is the improvement to be conducted in a public right-of-way?
- i. Has the land already been disturbed?

4. Determine Impact Status Category by locating the project activity in the Programmatic Agreement (PA) and following PA instructions for compliance.

5. Attach Compliance Documentation or explain and attach your rationale for determination of Impact selected.

6. If the project cannot be determined "No Effect, No Impact" use the information in the PA to begin consultation with the Division of History. Attachment A-1 is a sample of a possible letter to begin such consultation. The SHPO has 30 days from the receipt of documentation to respond. Or you can call Barbara Murphy, State SHPO, at 533-3563.

2. **FLOODPLAINS MANAGEMENT AND WETLAND PROTECTION** – See Attachment B

Any project, newly constructed or reconstructed/rehabilitated, resulting in beneficial or adverse conditions, that will be located in a floodplain or wetland, even if only a segment of the project involves such an area, triggers the need to comply with E.O. 11988 or 11990. This Executive Order requires the entity to consider alternatives and to notify the public regarding the proposed activity.

EXCEPTION: RESIDENTIAL REHABILITATION – Compliance with 11988 is required only when the cost of the rehabilitation is expected to exceed 50 percent of market value (appraised value) before improvement, excluding costs to bring a structure up to code.

Although they may be considered together, Floodplains and Wetlands are two separate issues and must be looked at individually.

Law/Regulation: Flood Disaster Protection Act of 1973 as amended, Executive Order 11990, Protection of Wetlands and Applicable State Legislation or Regulations, and Executive Order 11988 requiring participation in the National Flood Insurance Program. Federal policy recognizes that floodplains have unique and significant public values and call for protection of floodplains, and reduction of loss of life and property by not supporting projects located in floodplains, wherever there is a practicable alternative.

WHAT DO I DO?

1. Obtain and review a copy of the community's most current floodplain maps. If you do not have a copy of the community's floodplain map that illustrates the project area free maps and studies may be obtained from the Federal Emergency Management Agency by calling toll free 1-800-638-6620. Wetland maps may or may not be available.
2. Identify the site of the proposed project on the map to determine whether or not it resides in a known floodplain or wetland. See sample map (Attachment B). Mark or highlight where the project is on the map.
3. Ask yourself these questions:

FLOODPLAINS - Executive Order 11988 – See Attachments C, C2, C3, C4

- a. Will the project, or part of the project, be located in the 100-year floodplain?
- b. Will the project change the 100-year floodplain, or affect the flood way? (The flood way is the portion of the floodplain that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot at any point.)
- c. Are there available alternatives to locating the proposed project or activity in the floodplain?
- d. Is the proposed project in compliance with Executive Order 11988 and implementing HUD procedures in 24 CFR Part 55?
- e. Is the proposed project or activity subject to compliance with the Federally-approved State Coastal Zone Management Plans?
- f. Is the proposed project or activity in compliance with conditions set forth by the U.S. Army Corps of Engineers concerning permits for dredge and fill activity?

WETLANDS - Executive Order 11990 – See Attachments C, C2, C3, C4

Summary: Wetlands are those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. **Wetlands do not have to be literally “wet” to be considered wetland habitats.**

The U.S. Army of Engineers (Corps.) and the U.S. Environmental Protection Agency Jointly define wetlands as follows:

“Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life IN SATURATED SOIL CONDITIONS. Wetlands generally include swamps marshes, bogs, and similar areas.”

WHAT DO I DO?

1. Ask yourself these questions:

- a. Does the proposed CDBG project have the potential to affect or be affected by a wetland?
- b. Is the project in compliance with Executive Order 11990 and implementing HUD procedures in 24 CFR Part 55?
- c. Are there available alternatives to locating the project or activity in the wetland?
- d. Is the proposed project or activity subject to compliance with Federally-approved State Coastal Zone Management Plans?
- e. Is the proposed project or activity in compliance with conditions set forth by the U.S. Army Corps of Engineers concerning permits for dredge and fill activity?

2. If it is apparent that the project will be constructed in a floodplain or a wetland, the Grantee must follow the compliance requirements of 11988 that include notification of the public through publication of 2 public notices.

- a. The public notification process begins with the publication of the First Public Notice for Floodplains or Wetlands (Attachment C2) A 15 day comment period must be allowed.
- b. Follow the **EIGHT-STEP DECISION-MAKING PROCESS** (Attachment C). The Grantee must also submit documentation to show that the 8-step process did indeed take place.
- c. A Second Notice of Explanation (Attachment C3 or C4) may be published following the 15 day period after considering all the comments/suggestions from the public. The purpose of this notice is to inform the public about what the final determination of the project was - i.e., move the project, revise the plans, include floodplain measures, etc.
- d. Copies of both public notices and an explanation of your Eight Step Decision Making Process must be attached to the checklist when it is submitted.

3. If you are not sure or cannot determine whether wetlands exist within the project area contact the Army Corp of Engineers to make the determination. If the decision they make is positive, follow the instructions in #2 above.

4. The Corps has been assigned responsibility for administering the Section 404 permitting process.

Activities in wetlands for which permits may be required include, but are not limited to:

- placement of fill material
- ditching activities when the excavated material is side cast
- levee and dike construction
- mechanized land clearing
- land leveling
- most road construction
- dam construction

3. COASTAL BARRIERS - NOT APPLICABLE IN REGION VIII - UTAH

4. SOLE SOURCE AQUIFERS – See Attachment D

Law/Regulation: Safe Drinking Water Act of 1974

Summary: The Safe Drinking Water Act requires that EPA designate areas in which no new underground injection wells may be operated without a permit for the operation of the wells. The criteria for area designation is that an area has one well which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health.

WHAT DO I DO? Determine whether or not any federally assisted projects under the HUD programs will be constructed which may contaminate one of the 3 aquifers in Utah designated by EPA as the sole source of drinking water for a community.

1. Attachment D is a current letter from EPA that states that it has designated 3 aquifers in Utah as sole sources of drinking water as defined in Section 1424(e) of the Safe Drinking Water Act. The aquifers are located near Oakley, Castle Valley and Moab.

2. If the proposed project will in any way affect any underground water source the ECO must indicate this on the checklist and attach the letter from EPA indicating "No impact" to any sole source aquifers.

5. ENDANGERED SPECIES - ATTACHMENT E

Law/Regulation: Endangered Species Act - Any proposed action that might jeopardize continued assistance of endangered or threatened species or result in destruction or modification of critical habitat. Agencies shall insure that their actions conserve listed species and ensure, in consultation with other agencies, that their actions will not jeopardize listed species or modify critical habitats.

Summary - determine whether CDBG funded projects are likely to affect endangered or threatened species or Critical Habitats listed periodically under Section 4 of the Act.

WHAT DO I DO?:

1. In compliance with Section 7(a) of the Act ECO's must make a site observation and review the most current list of Endangered Species to ensure that a proposed project is not likely to affect the continued existence of an endangered or threatened species nor result in the destruction or adverse modification of critical habitats of plant and animal life.

2. If after making a site visit and reviewing the most current list, the ECO cannot make a determination whether or not the activity will impact any identified species, he/she must contact the U.S. Fish and Wildlife Office to make a determination.

6. WILD AND SCENIC RIVERS - ATTACHMENT F

Law/Regulation: The Wild and Scenic Rivers Act of 1968 - Policy and direction pertaining to wild and scenic rivers (WSR) are found in the Wild and Scenic Rivers Act of 1968. The Wild and Scenic Rivers Act establishes the National Wild and Scenic Rivers System (NWSRS), designates rivers included in the system, establishes policy for managing designated rivers, and prescribes a process for designating additions to the system.

Summary - The act states "*certain selected rivers of the Nation which with their immediate environments, possess outstandingly remarkable scenic, recreation, geologic, fish and wildlife, historic, cultural, or other similar values (including ecological values), shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.*" Consideration of a potential wild and scenic river is an inherent part of the ongoing land and resource management planning process.

WHAT DO I DO?:

Review the List of Inventoried Rivers, Attachment F. If your project will be crossing over, discharging into, or in anyway impacting any of the rivers or streams included in this National Rivers Inventory(NHI), you must contact the appropriate agency to determine the appropriate mitigation action. If your project will have no influence on any of the rivers or streams note this on the checklist.

7. AIR QUALITY - ATTACHMENT G

Law/Regulation: Clean Air Act 42 U.S.C. 7400, et. seq. Potentially applicable to all proposed activities. Air quality is an impact category for which specific Federal and non-federal governmental standards exist.

Summary: Consideration of air quality involves both analyzing the impact of the proposed project on air quality in the community and the impact of the existing environment on the proposed project forecasting. It depends on project size, type and its location (i.e., the suitability of the particular location for the type of project planned. Such consideration might, for example, argue against siting elderly housing adjacent to an expressway.

WHAT DO I DO?

1. Ask yourself the following questions:

- a. Does the project require an installation permit, operating permit or indirect source permit under local pollution control agency rules? If so, have permit requirements been satisfied?
- b. Is the project located in the vicinity of a monitoring station where air quality violations have been registered. If so, will the project exacerbate air quality problems in the area?
- c. If the project or its potential users would be particularly sensitive to existing air pollution levels, or those expected 10 and 20 years hence, has the project been designed to mitigate possible adverse effects?
- d. Will the proposal establish a trend, which, if continued, may lead to violation of air quality standards in the future?
- e. Will the proposed project have parking facilities for 2,000 cars (outside an SMSA) or generate traffic of a corresponding magnitude?

2. Review the letter from Air Quality, Attachment G. If, after reading through this letter, you are able to determine that your project has been identified as one in which it not necessary for you to contact the Air Quality Bureau, highlight or underline the part of the letter referring to your project, indicate this determination on the checklist, and attach a copy of the letter.

3. If your project is not one of those identified, complete the necessary compliance with this regulation by contacting the Department of Environmental Quality, Division of Air Quality regarding your project specifically. If mitigation is required, indicate how that will be accomplished. Attach the response to the checklist.

8. FARMLANDS PROTECTION

Law/Regulation: Farmland Protection Policy Act of 1981-Any proposed action that encourages the conversion of prime, unique, important farmlands. The purpose of this Act is to minimize the extent to which Federal programs contribute to the unnecessary conversion of farmland to non-agricultural uses.

Summary - Farmland is a unique natural resource. In an effort to assure that the direct or indirect actions of the Federal Government do not cause United States farmland to be irreversibly converted to non-agricultural uses the Farmland Protection Policy Act of 1981 was legislated.

WHAT DO I DO?

1. Assess whether or not the proposed project will convert farmland. Provide information on the land use zoning which now exists in the project area. If the land is already zoned for commercial or residential uses, indicate this on the checklist.

If you have questions or cannot make a determination regarding the status of the property contact Bill Broderson or Karl Kler at the Department of Agriculture, Natural Resource Conservation Service - 524-4573.

CASES WHERE THE ACT DOES NOT APPLY

- 1. The proposed project site does not contain prime, unique, or designated statewide or locally important farmland (as defined by the Act).**
- 2. The proposed project is on prime farmland that is already "committed" to urban development or water storage (applies to prime farmland only -- see 7 CFR 658.2(a)).**
- 3. Projects beyond the planning stage or where engineering or architectural design had begun or had been contracted for prior to August 6, 1984.**
- 4. Projects involving grants, loans or mortgage insurance for purchase or rehabilitation of existing structures.**

In summary, if neither the entire site nor any part of it are classified or identified as "farmland", the Act will not apply.

9. TOXIC CHEMICALS/RADIOACTIVE MATERIALS - ATTACHMENT H

Law/Regulations: HUD Notice 79-33

Summary: The grantee must review the most recent notice of HUD's EPA Super Fund Program (CERCLIS) Attachment H in this handbook. This listing identifies site locations of hazardous and toxic wastes. Sites are sorted by city. Determine whether or not the city in which the project is located is on the list. If not, make a copy of the page that shows it's **NOT** on the list for verification. Do NOT send a copy of the entire 50 page list! If a project is proposed within 3000 feet of such a site the following process must be observed.

WHAT DO I DO?

1. Contact the CERCLIS information office in the Regional EPA office in Denver at (800) 227-8917 Ext 6600 or 7830. Provide the location of the site and ask for the site "Contact Name". They will put you in touch with the person who has information about the site. Explain the nature of your project and the distance from the site.
2. Ask for a determination as to whether or not this is an Acceptable Separation Distance, or information from him/her as to whether or not the EPA site has been properly contained.
3. If EPA will not comment, you must contact the State Department of Environmental Quality, Division of Environmental Response & Mediation, Steven Thiriot, 536-4107. Request the same information.
4. If neither of these agencies will identify any special care that must be observed on your part, document process you have gone through on the Checklist and indicate that you intend to proceed as planned unless these agencies tell you otherwise.

10. ENVIRONMENTAL JUSTICE

Law/Regulations: Executive Order 12898

Summary: Grantees need to document that these funds will not be used for an activity or in such a manner that the finished project will result in the separation, segregation or discrimination of low/moderate income or minority groups in any way from the rest of society. The concern expressed by this Executive Order is that there may be specific projects, particularly but not limited to housing projects, where it may appear that the federal funds are being used to develop projects that segregate LMI persons from higher income individuals by trying to force them into areas or locations that are actually adverse sites, specifically because of the low income or minority status.

WHAT DO I DO? The ECO must evaluate the whole action being undertaken with HUD funds, even if the funds are only a portion of the overall project. That individual must specifically indicate on the checklist in words similar to the following that the notion of Environmental Justice and been evaluated and "there will be no activity performed with these funds that will in any way create discrimination or isolation of minority or low income individuals based on the siting or purpose of this project."

11. HUD ENVIRONMENTAL STANDARDS - 51(B)(C)(D)

(B) NOISE – See Attachment I

Law/Regulation: Noise Control Act 42U.S.C. 4903, 24 CFR 51(B) - Potentially applicable to All Proposed Activities. Grantees must take into consideration the noise criteria and standards in the environmental review process and consider ameliorative actions when noise sensitive land development is proposed in high noise exposure areas.

Summary - Noise is defined as any unwanted sound that disturbs human activity. In the urban environment noise is due primarily to vehicular traffic, air traffic, heavy machinery and heating, ventilation and air-conditioning operations. The prime concern of a CDBG environment impact assessment for noise should be the effect of existing and projected noise levels on the proposed activities and facilities.

WHAT DO I DO?:

1. Projects involving infrastructure improvements (sidewalks, water/sewer, curb and gutter), industrial or commercial facilities are not considered "noise sensitive". Just indicate this on the checklist and move on to the next item on the checklist!

2. If your project involves the construction of housing and other noise sensitive projects such as housing facilities, nursing homes, college dormitories, hospitals, libraries, you must take specific measurements to determine if any of the following conditions exist:

- (a) **major roadways (4 lanes) within 1,000 feet of the site.**
- (b) **railroads within 3,000 feet of the site,**
- (c) **commercial airports within 5 miles of the site. ONLY THOSE AIRPORTS LISTED BELOW are considered involved in Utah based upon regularly scheduled commercial jet traffic. ALL military airports within 15 miles considered involved.**

**Cedar City-----Cedar City Municipal
Monument Valley
Moab
Bryce Canyon
St. George-----St. George Municipal
Salt Lake City-----Salt Lake City International**

3. If any of the above circumstances exist you must contact DCD to obtain a copy of the HUD Noise Assessment Guidelines. The process contained in the Guidelines must be completed to determine noise involvement and the development of a mitigation strategy, if necessary.

4. No new residential construction will be allowed if the decibel level is above 75 db.

5. Rehabilitation to existing residential structures must be addressed in the identical manner as new construction. However, after performing the necessary calculations, you may rehabilitate an existing structure that exceeds the 65-db levels. Grantees are only required to notify the resident of the existing noise conditions, NOT to fix the noise problem.

(C) HAZARDOUS SITINGS: Above Ground – See Attachment J

NOTE THE TWO EXCEPTIONS BELOW

1-Compliance and review doesn't apply to a property owner's personal storage tanks for residential use.

2-For the purpose of this impact category the term "rehabilitation" or "modernization" refers only to such repairs and renovation of a building or buildings as will result in an increased number of people being exposed to hazardous operations by increasing residential densities, converting the type of use of a building to habitation, or making a vacant building habitable

Law/Regulation: HUD Notice 79-33 24 CFR-Potentially applicable to all proposed activities Part 51(C)(D). These are regulatory compliance requirements, not mandated Federal regulation compliance. Applicable to sites located near operations handling conventional fuels or chemicals of an explosive or flammable nature.

Summary - Both people and property are at significant risk to exposure from the explosion and thermal radiation (fire) when projects are located too close to storage containers of hazardous gas and liquids or chemicals of a flammable or explosive nature. The concern is above ground hazards within one mile of the project in direct line of site.

WHAT DO I DO?:

1. Make a site review of the project and identify any **ABOVE GROUND STORAGE TANKS** (see Attachment J) that are **VISIBLE** within a one mile direct line of sight of the project, i.e., storage tanks, holding facilities, process vessels, tank truck AND parking areas, railroad freight yards or sidings, transmission lines which may be used to store, process or transport HAZARDOUS products.
2. You may also want to contact the local fire department or fire prevention bureau for information on the tanks.
3. If a hazardous determination is made and you are increasing the number of people or structures at the project site, **YOU MUST MITIGATE!** Contact DCD for a copy of HUD's Urban Development Siting with Respect to Hazardous Commercial/Industrial Facilities to determine the necessary mitigation requirements.
4. Housing rehabilitation to an existing structure that is occupied where the result of your project will not increase the population at the site is the only project that does not have to mitigate. However it is still necessary for the ECO to notify the homeowner of the condition and obtain a release from them to proceed with the proposed work.

Adjust Attachment I (sample letter) to use as a waiver.

5. If no above ground hazards are determined, indicate this on the checklist.

(D) AIRPORT CLEAR ZONES - FIGURES 10/11

Summary - The purpose of this regulation is to promote compatible land uses around civil airports and military airfields by identifying suitable land uses for Runway Protection Zones at civil airports and for Clear Zones and Accident Potential Zones at military airfields. Potential aircraft accident problems that are inevitable side effects of aircraft operations make some types of development incompatible or unsuitable for locations in the immediate vicinity of airports and airfields.

WHAT DO I DO?:

1. An Airport Clear Zone (civil airports) as determined by the Federal Aviation Administration, is considered to be a trapezoidal area that may extend up to a maximum of 2500 feet from the end of the runway. The specific airport operators must supply actual length. The military has identified two zones. In total they extend about 15,000 feet from the end of the runway and are a maximum of 3,000 feet wide.

2. Ask yourself these questions:

- a. Will any part of the proposed project be sited in a Clear Zone? You can make this determination by observation or obtaining airport maps available from the air comptroller of the airport possibly involved.
- b. If the project site is not within a designated clear zone, indicate this on the checklist
- c. If the project appears to be within the clear zone contact the state for the HUD guidelines that must be reviewed (Transmittal Handbook No 1390.4) before the project can commence.
- d. **New** projects may be done within a clear zone only if the facility meets the conditions of an "acceptable use" identified in the manual above
- e. **Rehabilitation** of an existing structure in a Clear Zone may be done only if the applicant documents that he/she is aware of the existing condition for potential accidents and approves the rehabilitation being done. Use the sample noise letter in Figure 8 to prepare this letter.
- f. In either case, assistance may be provided only if the proposed project or facility is one which is not frequently used or occupied by people and the airport operator will provide written assurances that the land is not planned for acquisition as part of a clear zone acquisition program.
- g. If a Clear Zone is owned by an airport, the airport must determine what facilities can be constructed on it.

12. LOCAL LAWS AND REGULATIONS

Compliance: The ECO must ensure that all local laws, permits, regulations, etc. have been identified and met, or indicate how and when they will be met at the time of the completion of the Checklist.

13. LEAD BASED PAINT – SEE HANDBOOK SECTION I

Law/Regulation: **24CFR Part 35** – Applicable to HUD funded projects involving buildings/housing built prior to 1978 when children are present or the building is used for overnight occupancy.

Summary: HUD is issuing this regulation to protect young children from lead-based paint hazards in housing that is financially assisted by the Federal Government.

WHAT DO I DO? The regulations are terribly complicated. The requirements vary based on 1) the type of building involved 2) the age of persons residing in or using the in building 3) type of activity (physical or non-physical) and 4) the type of HUD funding – ESG, CDBG, or HOME. First of all, grantees should review Section I of the handbook and then call Cheryl Elliott, HUD Environmental Specialist at the State of Utah to determine exactly what will have to be done in order to comply with the regulations.

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